IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.17517 of 2002
and
WMP.No.23835 of 2002

A.Rajendran
Managing Partner of
M/s.Rajendran and Company
Melakuppam Post
Neyveli 607 802 Petitioner

Versus

The General Manager
Thermal Power Station I
Neyveli Lignite Corporation Limited
Neyveli 607 807 Respondent

Petition filed under Article 226 of the Constitution of India,
praying to issue a writ of Certiorari, as stated there in.

For Petitioner : Mr.J.Raja Kalifulla
For Respondent : Mr.N.A.K.Sharma

:ORDER

This writ petition has been filed for the issuance of the writ of certiorari, to call for the records from the respondent in his proceedings Ref.Lr.No.GM/TPS-1/TMC-7/T-054/048/2002 dated 02.02.2002, and to quash the same.

2. The brief facts that are necessary for the disposal of this writ petition are as follows: Sealed tender was invited by the respondent for Emergency Shut Down and Running, Maintenance and Repair Works in Boiler Auxiliary in Thermal Power station at Neyveli, and the petitioner tender was accepted later on. On a complaint given by one Rajan, representing Suji Enterprises, the matter was investigated and on 06.07.2001, a show cause notice was issued on the ground that the petitioner threatened others not to apply for tenders and they formed a cartel in affording tenders, resulted in loss to the respondent company. After getting reply from the petitioner, the respondent passed an order

dated 02.02.2001, blacklisting the petitioner. Against that order, the present writ petition has been filed.
3. Mr.J.Raja Kalifulla, learned counsel appearing for the petitioner referred to the entire order of the respondent and also referred to various judgment of the Honourable Supreme Court and contended that order is not legally sustainable. Finally, he referred to the Order that the blacklisting has not been confined to a specified period. Therefore, blacklisting for an indefinite period is not legally permissible.

4. In support of his contention, the learned counsel for the petitioner referred to a Division Bench decision of this Court in M/s.P.T. Sumber Mitra Jaya, Chennai Vs. The National Highways Authority of India (2003 Writ L.R. 327), wherein Paragraph-47 reads as follows: "Then it was pointed out that the Court should interfere only where the 'public interest' was involved when it came to interfere with the Government's discretion in respect of non-statutory contracts. We have already clarified above that this was not a simple question of terminating the contract or accepting or non-accepting a tender. Here is an order which stigmatised the appellant permanently. We have already clarified that this shows a total non-application before taking a drastic action like blacklisting of the appellant permanently. A subsequent assurance given in the Court that the action was meant only for one year would really be of no consequence in the wake of specific language of the impugned order of blacklisting. From the language at least, it appears that blacklisting is permanent."

5. This decision squarely applies to the facts of the present case. Inasmuch as the period of blacklisting has not been specified, it is blacklisting for indefinite period. Therefore, the impugned order is liable to be quashed.
6. In the circumstances, the matter is remitted back to the respondent for passing fresh order on the merits of the case. The learned counsel appearing for the petitioner submitted that in view of the fact that the matter is pending for two years, the entire matter may be given a quietus and need not be remitted back to the authority.

7. Mr.N.A.K.Sharma, learned counsel appearing for the respondent submitted that it is a serious matter which has to be taken into account in the interest of the respondent company. 8. Considering the submissions made by the counsel for the petitioner and the respondent, this Court is of the view that the petitioner may approach the respondent with a request not to insist upon blacklisting and satisfy the respondent that he may not do anything against the interest of the respondent and it is for the respondent to consider such request and pass appropriate orders. 9. With this observation, the writ petition is allowed. Consequently, connected WMP is closed. No costs.

16.10.2003
Index:yes Internet:yes
ksr A.K.RAJAN,J.